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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,136	10/21/2003	James V. Miller	P00991-US-00 (25490.0028)	3634
22446	7590	07/05/2005	EXAMINER	
ICE MILLER ONE AMERICAN SQUARE BOX 82001 INDIANAPOLIS, IN 46282			PUROL, DAVID M	
			ART UNIT	PAPER NUMBER
			3634	

DATE MAILED: 07/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/690,136	Applicant(s) MILLER, JAMES V.	
	Examiner David M. Purol	Art Unit 3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 10-12, 14-18, 23-34, 36, 37, 39 and 40 is/are pending in the application.
4a) Of the above claim(s) 3, 4, 6, 14, 15, 26-33, 36 and 37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 5, 10-12, 16-18, 23-25, 34, 39 and 40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>03312005</u> . | 6) <input type="checkbox"/> Other: _____ |

1. Applicant's election of Species VI in the reply filed on March 31, 2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

The applicant states that claims 1-6, 10-12, 14-18, 23-34, 36-37, 39-40 read on the elected species. However, upon review of the claims it is ascertained that claims 3, 4, 14, 15 read on non-elected species II, claims 6, 26-33 read on the non-elected species I, II, III, IV, V, VII inasmuch as these claims require the flexible strengthening and the tensioning means as being provided on the guides whereas the elected Species VI has been disclosed and depicted in figure 11 as having the flexible strengthening and the tensioning means provided on the upper and lower structure of the building aperture. Claims 36, 37 do not read on the elected Species VI inasmuch as this claim requires that the shutter curtain provides tension to the flexible strengthening device which is not disclosed nor depicted in figure 11 of the instant application.

Accordingly, claims 3, 4, 6, 14, 15, 26-33, 36, 37 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 10, 11, 16-18, 23, 24 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Kessous. Kessous discloses a shutter comprising a curtain 140, filaments 240a, 240b, 195, and tensioning devices 241a, b; 242a, b; 210a, b.

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3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5,12,25,34,39,40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kessous. Regarding the claim language setting forth the use of first and second track guides, note that Kessous clearly recognizes and discloses in column 1, lines 40-67 and column 2, lines 1-6 that the use of first and second track guides is well known in the art of shutter curtains. Accordingly, no patentable weight can be attributed to the use of track guides.

4. The following prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Haswell, Cooper, Wileman, Sembower, Jordan, Greenberg.

5. Any inquiry concerning this communication should be directed to David M. Purol at telephone number (571) 272-6833.


David M Purol
Primary Examiner
Art Unit 3634